Exhibit 40 to Plaintiff's
Memorandum of Points and Authorities
in Support of Its Motion for Temporary
Restraining Order and Preliminary Injunction
(PX00533)

Title:Whole Foods Market : Investor Relations : Conference CallsDate:Mon Mar 26 2007URL:http://www.wholefoodsmarket.com/investor/script_Q203.html

Script for Conference Call on 2Q03 Press Release

The following document is a replication of the notes used in Whole Foods Market, Inc.'s Second Quarter Fiscal Year 2003 Conference Call presentation. These notes represent a truncated version of the conference call and do not include the Q&A segment of the call.

Good afternoon. Joining me today are Glenda Flanagan, Executive Vice President and Chief Financial Officer, Jim Sud, Executive Vice President of Growth & Business Development, AC Gallo and Walter Robb, Executive Vice Presidents of Operations, and Cindy McCann, Vice President of Investor Relations.

First for the legalities: The following constitutes a "Safe Harbor" statement under the Private Securities Litigation Reform Act of 1995. Except for the historical information contained herein, the matters discussed in this call are forward-looking statements that involve risks and uncertainties, including but not limited to general business conditions, the timely development and opening of new stores, the integration of acquired stores, the impact of competition, and other risks detailed from time to time in our SEC reports, including the reports on Form 10-K for the fiscal year ended September 29, 2002. We undertake no obligation to update forward-looking statements.

Please note that our press release includes an income statement, balance sheet and cash flow statement all of which are now available on our website at wholefoodsmarket.com along with the scripted portion of this call.

I will now review our performance for the second quarter and our guidance for fiscal year 2003.

Our sales for the quarter were $725 million, a 16 percent increase over the prior year. This increase was driven by comparable store sales growth of 7 percent and 12 percent weighted average square footage growth. During the quarter, we opened three new stores in San Mateo, Los Angeles, and Atlanta. Our average weekly sales for all stores were a record $423,000.

Over our history Whole Foods Market has produced some incredibly strong comps, particularly over the last two-year period when comps averaged over 10 percent. While it was great while it lasted, and pretty remarkable given the economic environment, we knew that at some point we would revert to our historical 8 percent mean. The second quarter was definitely not your normal quarter, producing everything from extreme weather across several major markets followed by the outbreak of the war. Our weekly comps reflected these events ranging from over 10 percent in the early weeks, to just over 3 percent when the East Coast, from Boston to North Carolina, was hit by record-breaking snow and ice storms. Those storms were followed by a severe ice storm in Texas, and unlike the East Coast, we are not prepared for that here in Texas. Austin, Dallas and San Antonio were essentially shut down for several days. That was followed with Denver getting hit with the biggest snowstorm they've seen in 90 years. We had 61 stores close for all or part of at least one day during the quarter. We saw a drop in comps of 400 basis points during the week the war started. We estimate the Easter shift, from the second quarter last year to the third quarter this year, negatively impacted this quarter's comps by about 50 basis points. Excluding the impact of the weather and the start of the war, we estimate that our comps would have been in line with our guidance.

On a positive note, things are going well at the three Harry's stores. Comps are continuously improving due to our remodeling efforts as well as improved leadership, morale and execution. The negative impact from the three Harry's stores on our comps was only 42 basis points in the quarter, down from the 56 basis points in the first quarter, even though they were in the comp base for the entire second quarter. Our latest Atlanta store has created more positive momentum, setting a new standard for our South region, and blending the best of both Whole Foods Market and Harry's Farmers Market. We now have three Whole Foods Market stores in the Atlanta area in addition to our three Harry's Farmers Market stores.

During the quarter, transaction count increased approximately 2% and average basket size increased approximately 5%. The four weeks of severe weather and the start of the war had an impact on our transaction count, but the breakdown in transaction count and average basket size contribution to comps now appears to be returning to our more normalized ratio of 60 to 40. Approximately half of the 5% increase in average basket size was due to increased item count, in line with what we experienced in the first quarter.

Gross profit decreased 55 basis points to 34.5% of sales. The decrease in gross profit as a percentage of sales was primarily due to higher occupancy costs and cost of goods sold. Margins were down in about half of our regions and in half of our consolidated team results, most notably in produce. Much of this decline was due to increased spoilage due to store closures related to the weather and some was due to certain market specific pricing strategies. These strategies are not isolated to the second quarter, but in previous quarters they have generally been offset by improvements in other regions and that did not happen this quarter.

Lower-than-expected sales resulted in a 20 basis point increase in total direct store expenses to 24.9% of sales. G&A as a percentage of sales improved 23 basis points in the first quarter and 48 basis points this quarter. We were very focused in building G&A leverage into our fiscal year plan and we are pleased with the results we are seeing.

For the 130 stores in the comparable store base, a 10 basis point improvement in direct store expenses was more than offset by a 29 basis point decrease in gross profit, resulting in a 19 basis point decrease in store contribution to 10.1% of sales.

Despite the extraordinary events during the quarter, including extreme weather and the outbreak of the war, we produced a 26% increase in net income and 21% increase in diluted earnings per share. Depreciation and amortization totaled $22.5 million in the quarter, and EBITDA increased 21% to $66.4 million or 9.2% of sales.

For the quarter, net operating profit after tax increased 18 percent to $27 million, and total EVA®

capital increased 15 percent to $1.2 billion. The capital charge for the quarter was $27 million, resulting in EVA of $51,000, a $1 million improvement over the prior year, and our first quarter of positive EVA. Our EVA improvement is being driven by our comparable stores, which produced an annualized net operating profit after tax return on invested capital during the quarter of 34 percent.

During the quarter, we produced $35 million in free cash flow. Our balance sheet remains very strong. Year over year, our total assets increased 19 percent to $1.1 billion, our total liabilities decreased 9 percent to $390 million and shareholders' equity increased 43 percent to $700 million. As of the end of the quarter, we had approximately $171 million in long-term debt and approximately $98 million in cash. Our long-term debt still includes $148 million of zero coupon convertible bonds as none of the bondholders elected to put their bonds on March 2, 2003. We have recently extended the maturity on our current credit facility to October 1, 2004 and reduced the line to $100 million, better reflecting our lack of borrowing needs going forward. For the third consecutive quarter, we have had no amounts drawn on our line of credit.

We continue to fill our new store pipeline, signing five new leases for new stores totaling 232,000 square feet. We now have 27 stores in development averaging 43,000 square feet in size, and a record 1.2 million square feet under development.

I will now review our forward-looking guidance for the 2003 fiscal year: For this fiscal year, we now expect sales growth to be at the low end of our previously stated 15 percent to 20 percent guidance range. We want to give you as much guidance as we can with respect to our comps for the third quarter, however, with the continued uncertainty in the economy and with only three weeks behind us, one of which included the positive impact from the Easter shift, it is difficult to predict future sales trends. For the last six weeks, Comps have been trending at the low end of our 6.5% to 8.5% guidance and that is our best estimate of where we expect they will remain for the second half of the year. This is below our historical range, however, we are up against two years of over 10 percent comparable store sales increases in the second half of the year, and the three Harry's Farmers Market stores are expected to continue to negatively impact comparable store sales in the range of 40 to 50 basis points. Our comps for the full fiscal year are expected to be between 7 percent and 8 percent, which would fall in line with our four-year historical two-year comp average of 18%.

We expect weighted average square footage growth of 12 percent for the year, including expansions of existing stores. We plan to open two stores in the third quarter and two stores in the fourth quarter, one of which will be a relocation of an existing store.

For the year, we expect gross profit to be lower as a percentage of sales compared to the prior year. We want to maintain pricing flexibility in the event of further or prolonged economic weakness. In addition, in the fourth quarter of last year we had a $3.4 million LIFO credit which we do not expect to have this year. We expect operating margin improvement to be driven by lower pre-opening expenses and general and administrative expenses as a percentage of sales. Pre-opening and relocation expense is expected to be in the range of $8 million to $10 million. Capital expenditures for the year are expected to be at the low end of our $180 million to $200 million range of guidance, and we expect net interest/investment expense to be at the low end of our $6 million to $8 million range.

Due to sales expectations now being at the low end of our guidance, we also expect diluted earnings per share to come in at the low end of our $1.62 to $1.69 guidance range. We expect third quarter diluted earnings per share to be in the range of $0.41 to $0.42 and fourth quarter diluted earnings per share to be in the range of $0.38 to $0.39. This guidance includes the pre-tax impairment charge of $1.4 million, or $0.01 in diluted earnings per share, taken in the first quarter relating to our investment in Gaiam, Inc. but does not include any potential future impairment charge relating to this investment. It also does not include a gain relating to the sale of Blooming Prairie Cooperative, a cooperative natural foods distributor of which we were a member. That gain will be recognized when our distribution is received since we are unable to pre-determine the amount of the gain.

We are pleased to announce that for the third year in a row Whole Foods Market has made the list of the 100 Best Corporate Citizens as ranked by Business Ethics Magazine. According to the magazine, the aim of the list is to identify firms that excel at serving a variety of certain stakeholders such as shareholders, the community, minorities and women, employees, the environment, non-U.S. stakeholders, and customers.

We are also thrilled with the successful efforts of consumers, producers and other retailers to inform and persuade legislators about the importance of organic feed for organic livestock. Recently, Congress repealed Section 771 less than 60 days after the offending rider was passed allowing livestock producers to label their meat, poultry and dairy products as "organic" even if the animals had not been fed organic feed. The repeal's success is a triumph for the organic industry and verifies the strength of the consumer mandate to protect the organic standards, despite some who want to capitalize on the organic food boom, but sidestep the standards.

The Whole Foods Market business model is very successful. We continue to execute at a high level, posting strong sales and comps. As highlighted in the chart in our press release, we have consistently produced a healthy store contribution margin of over 9%. We believe there is much growth potential ahead in both new and existing markets and that opportunities will develop increasingly as more and more people are attracted to natural and organic products. We have a strong development pipeline and sufficient capital available to grow as rapidly as we can. We believe our results will continue to incrementally improve as we open new stores, which keep getting bigger and better, and from our consistently strong comparable store sales growth.

By 2010, our goal is to have over $10 billion in sales. Assuming our future per store increases in average weekly sales and average size are consistent with our five-year CAGR of 7% and 5%, respectively, $10 billion in sales should translate to approximately 300 stores.

□ *EVA® is a registered trademark of Stern Stewart & Co.*